

# LEAVENWORTH BOARD OF ZONING APPEALS

Monday, January 22, 2024 – 6:00 P.M.  
COMMISSION ROOM, CITY HALL  
LEAVENWORTH, KANSAS

## AGENDA

### CALL TO ORDER:

1. Roll Call/Establish Quorum
2. Approval of Minutes: December 18, 2023 **Action:** Motion

### OLD BUSINESS:

**None**

### NEW BUSINESS:

1. **ELECTION OF OFFICERS**
2. **2024-03 BZA – 4618 S 4<sup>TH</sup> STREET**  
Hold a public hearing for Case No. 2024-03 BZA – 4618 S 4<sup>th</sup> St., wherein the petitioner is seeking a variance from Section 8.11 of the adopted Development Regulations to allow more than one sign for an individual storefront, and to allow the sign surface to be greater than 10% of the wall surface for a property zoned General Business District (GBD).

ADJOURN



**BOARD OF ZONING APPEALS MINUTES**  
**MONDAY, December 18, 2023, 6:00 P.M.**  
**COMMISSION ROOM, CITY HALL**  
**LEAVENWORTH, KANSAS**

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**CALL TO ORDER:**

**Board Members Present**

Dick Gervasini  
David Ramirez  
Daniel Bolling  
Jan Horvath

**Board Member(s) Absent**

Kathy Kem

**City Staff Present**

Michelle Baragary  
Julie Hurley

Chairman Gervasini called the meeting to order at 6:00 p.m. and noted a quorum was present.

**APPROVAL OF MINUTES:** November 27, 2023

Chairman Gervasini asked for comments, changes or a motion on the November 27, 2023 minutes presented for approval. Commissioner Horvath moved to approve the minutes as presented, seconded by Commissioner Bolling and approved by a vote of 4-0.

**OLD BUSINESS:**

None

**NEW BUSINESS:**

**1. 2023-35 BZA – 2205 S 4<sup>TH</sup> STREET**

Hold a public hearing for Case No. 2023-35 BZA – 2205 S 4<sup>th</sup> Street, wherein the petitioner is seeking a variance to section 8.15 of the adopted Development Regulations to allow the use of an existing nonconforming sign after a change in tenant and business name.

Chairman Gervasini called for the staff report.

Planning Director Julie Hurley stated the applicant and owner of the property, Kevin Albee, is requesting a variance from section 8.15 of the adopted Development Regulations to allow the use of an existing

nonconforming sign after a change in tenant and business name for the property located at 2205 S 4<sup>th</sup> Street.

The subject property is zoned GBD, General Business District, and is occupied by A&D Hearing Center, which is an allowed use in the GBD zoning district. There is a second tenant space in the building that is currently vacant. There is one existing freestanding sign associated with the property, which is currently located within the 4<sup>th</sup> Street right-of-way (ROW). Current regulations require that freestanding signage in the GBD zoning district be located on the parcel and be setback a minimum of 5' from any property line, making the existing sign nonconforming.

Section 8.15. A of the current Development Regulations requires that a nonconforming sign be modified to conform, replaced with a conforming sign, or removed if there is a change in business name or ownership.

*8.15.A Nonconforming: A nonconforming sign existing lawfully at the time of the passage of this sign code may be continued under the terms as hereinafter provided that such nonconforming signs shall be modified to conform, replaced with a conforming sign or removed according to the following:*

- 1. If there is a change in business ownership, tenant, name or type of business.*
- 2. Any maintenance, repair or alteration of a nonconforming sign shall not cost more than 25% of the current value of the sign as of the date of alteration or repair.*

As the existing sign is considered "existing nonconforming", it may continue to exist in its current state, but no additional permits may be issued for new tenant signage. The owner wishes to obtain a variance in order to assist in marketing the tenant space, so that a new tenant will be able to apply for a permit for signage upon occupancy. The existing sign does not create any vision or sign distance issues for traffic. Since 2016, two variances of a similar nature have been approved for businesses along 4<sup>th</sup> Street within several blocks of the subject property.

After the required notice was published to properties within 200', staff has received no comments from any notified property owners.

Chairman Gervasini asked for questions about the policy report.

Commissioner Horvath asked when why the City cares how much a sign costs, referring to section 8.15.A(2) of the Development Regulations, which states "Any maintenance, repair or alteration of a nonconforming sign shall not cost more than 25% of the current value of the sign as of the date of alteration or repair.

Ms. Hurley stated what that means is if you are doing basic maintenance that would not require a variance to do maintenance on an existing nonconforming sign. However, if you are doing more than basic maintenance, such as changing the structure, that would require a variance for that sign. This is fairly standard in other cities in handling nonconformities. Once you cross a threshold of value, you are no longer just maintaining the sign, you are essentially replacing the sign.

Chairman Gervasini asked when there is a new tenant, does the new tenant need to request a variance to install their sign.

Ms. Hurley responded another variance is not required. The new tenant would only need to apply for a tenant panel permit by submitting a sign permit application. The variance is for the entire sign structure.

With no further questions about the policy report, Chairman Gervasini opened the public hearing.

Kevin Albee, property owner, stated when he found out there was an issue with the sign, he contacted Young Sign Company about how to fix it. Young Sign Company looked at several options, including moving the sign. The current property line is about 3 ft. from the front of the building, so there is no way to bring it into compliance. Mr. Albee further stated he was informed by Young Sign Company that he would not get approved for a sign on top of the building either.

Chairman Gervasini stated that is true, rooftop signs are not permitted.

Mr. Albee stated his options are to not have a sign, leave the sign the way it is, or find a way to get tenants to be able to use the upper half of the sign, which is currently just a blank tenant panel.

Ms. Hurley stated that the location of the sign does not provide any sort of hindrance in terms of vision for traffic coming in and out of the parking lot.

Chairman Gervasini asked when the State took more of the right-of-way, was that also when they widened the turn to the east or was that the City that widened the turn.

Ms. Hurley responded the City widened the turn to the east. The property to the north is a separate lot from Mr. Albee's building, and there used to have a doctor's office on that property. The City purchased that property to make these intersection improvements. KDOT had acquired that additional ROW years before.

Mr. Albee stated the State expanded the ROW about 5 ft on each side.

Chairman Gervasini asked when that was.

Mr. Albee responded that he has had this building since 1991. He believes it was about 15-20 years ago that KDOT expanded the ROW.

Commissioner Bolling asked in situations like this where KDOT expanded the ROW, is it customary for the City to modify their regulations to help grandfather in certain businesses that are affected by these changes.

Ms. Hurley responded that essentially "grandfathered" means it is existing nonconforming. So when KDOT changed that ROW, all the signage and some of the buildings with their setbacks became existing nonconforming. The purpose of a variance is that there may be cases where it is appropriate or reasonable for that nonconformity to stay, or there may be instances where it is not appropriate. The time to review the sign then comes when the owner is ready to make a change to the sign. This gives some oversight to make sure that it is still an appropriate location for that sign.

Chairman Gervasini asked if the variance follows the owner or the property.

Ms. Hurley responded it goes with the property.

Commissioner Ramirez asked to clarify that if the property changes hands later on that the variance is still valid for the property.

Ms. Hurley responded in the affirmative.

With no further questions or discussion, Chairman Gervasini closed the public hearing, and read the following criteria regarding the Board's authority and reviewed each item.

**BOARD OF ZONING APPEALS AUTHORITY:**

The Board's authority in this matter is contained in Article 11 (Board of Zoning Appeals), Section 11.03.B (Powers and Jurisdictions – Variances)

**Variances:** To authorize in specific cases a variance from the specific terms of these Development Regulations which will not be contrary to the public interest and where, owing the special conditions, a literal enforcement of the provisions of these Development Regulations will, in an individual case, result in unnecessary hardship, provided the spirit of these Development Regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the Development Regulations of the City of Leavenworth, Kansas in such district. Rather, variances shall only be granted for the detailed requirements of the district such as area, bulk, yard, parking or screening requirements.

1. The applicant must show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of this specific piece of property at the time of the effective date of the Zoning Ordinance, or where by reason of exceptional topographical conditions or other extra-ordinary or exceptional circumstances that the strict application of the terms of the Development Regulations of the City of Leavenworth, Kansas actually prohibits the use of his property in the manner similar to that of other property in the zoning district where it is located.
2. A request for a variance may be granted, upon a finding of the Board that all of the following conditions have been met. The Board shall make a determination on each condition, and the finding shall be entered in the record.

a) *That the variance requested arises from such condition which is unique to the property in question and is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.*

**Vote 4-0**

**All board members voted in the affirmative.**

b) *That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.*

**Vote 4-0**

**All board members voted in the affirmative.**

c) *That the strict application of the provisions of the Development Regulations from which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.*

**Vote 4-0**

**All board members voted in the affirmative.**

d) *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.*

**Vote 4-0**

**All board members voted in the affirmative.**

e) *That the granting of the variance desired will not be opposed to the general spirit and intent of the Development Regulations.*

**Vote 4-0**

***All board members voted in the affirmative.***

3. In granting a variance, the Board may impose such conditions, safeguards, and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of the Development Regulations.

**ACTION:**

Approve or deny the request for a variance from section 8.15 of the Development Regulations to allow the use of an existing nonconforming sign after a change in tenant and business name.

Chairman Gervasini stated based on the findings, the variance for Case No. 2023-35 BZA is granted with no conditions.

Ms. Hurley stated there is no further business for tonight, and there will be a meeting on January 22, 2024.

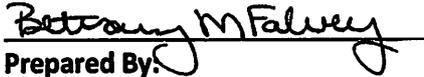
With no further business, Chairman Gervasini called for a motion to adjourn. Commissioner Ramirez moved to adjourn, seconded by Commissioner Bolling, and passed 3-0.

The meeting adjourned at 6:15 p.m.

Minutes taken by Planning Assistant Michelle Baragary.

**BOARD OF ZONING APPEALS AGENDA ITEM**  
**VARIANCE REQUEST**  
**2024-03-BZA**  
**4618 S. 4<sup>th</sup> STREET**

**JANUARY 22, 2024**



**Prepared By:**  
Bethany Falvey  
City Planner

**SUMMARY:**

The applicant is requesting a variance to allow 3 additional signs on the south side, 4 additional signs on the east (front) wall, and to exceed the maximum wall surface coverage for attached signs from 10% to 18% on the east wall for a property zoned GBD, General Business District.

**DISCUSSION:**

The U-Haul self-storage is located at 4618 S. 4<sup>th</sup> Street in an area zoned GBD, General Business District. Per Article 8.11 of the Development Regulations, one attached side per side is permitted in the GBD zoning district. Two attached wall signs, "DRIVE-IN STORAGE" were approved in June 2023, one on the front (east) wall and one on the south wall. In June 2023, there was discussion with the same sign company that the other signs would not be permitted per our code. In early August 2023, the other signs were installed without a permit and notice of violation was sent to the property owner. The application for the other six signs were submitted in September 2023. A notice of violation was sent to the owner in December 2023. We received a variance application after that second violation letter. The variance is being requested for signs that have already been installed and were denied due to exceeding the number and wall percentage allowed per sign.

The requested variance is to allow 3 additional signs on the south side, 4 additional signs on the east (front) wall, and exceed the maximum wall surface coverage for attached signs from 10% to 18% on the east wall for a property zoned GBD, General Business District.

**BOARD OF ZONING APPEALS AUTHORITY:**

The Board's authority in this matter is contained in Article XV (Board of Zoning Appeals), Section 11.03.B (Powers and Jurisdictions – Variances)

**Variances:** To authorize in specific cases a variance from the specific terms of these Development Regulations which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these Development Regulations will, in an individual case, result in unnecessary hardship, provided the spirit of these Development Regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the Development Regulations of the City of Leavenworth, Kansas in such district. Rather, variances shall only be granted for the detailed requirements of the district such as area, bulk, yard, parking or screening requirements.

1. The applicant must show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of this specific piece of property at the time of the effective date of the Zoning Ordinance, or where by reason of exceptional topographical conditions or other extra-ordinary or exceptional circumstances that the strict application of the terms of the Development Regulations of the City of Leavenworth, Kansas actually prohibits the use of his property in the manner similar to that of other property in the zoning district where it is located.
2. A request for a variance may be granted, upon a finding of the Board that all of the following conditions have been met. The Board shall make a determination on each condition, and the finding shall be entered in the record.
  - a) *That the variance requested arises from such condition which is unique to the property in question and is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.*
  - b) *That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.*
  - c) *That the strict application of the provisions of the Development Regulations from which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.*
  - d) *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;*
  - e) *That granting of the variance desired will not be opposed to the general spirit and intent of the Development Regulations.*
3. In granting a variance, the Board may impose such conditions, safeguards, and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these Development Regulations.

**ACTION:**

Approve or deny the variance to allow 3 additional signs on the south side, 4 additional signs on the east (front) wall, and exceed the maximum wall surface coverage for attached signs from 10% to 18% on the east wall for the U-Haul self-storage located at 4816 S. 4<sup>th</sup> St.



DRIVE-IN  
STORAGE

DRIVE-IN  
STORAGE

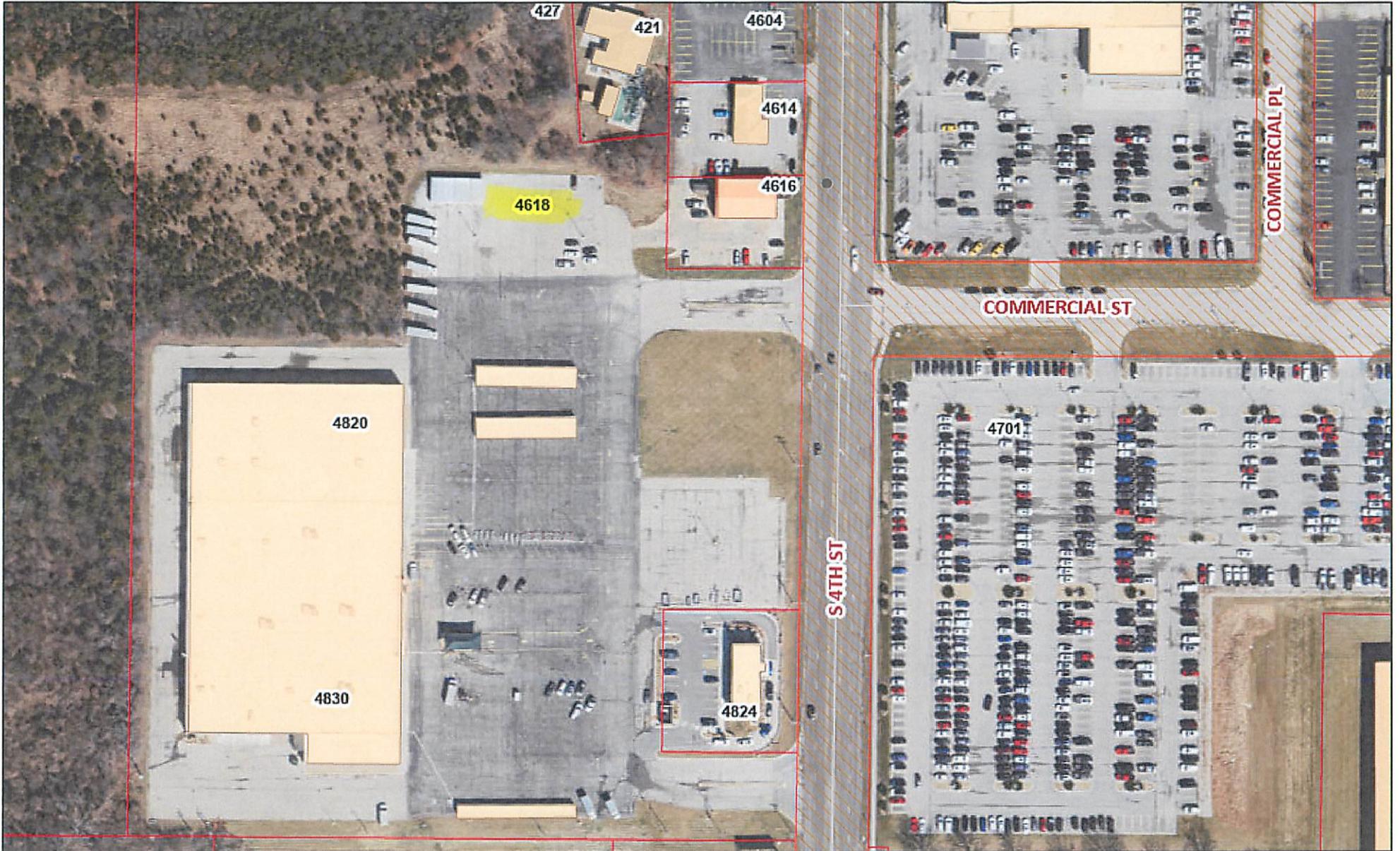
4010

U-HAUL  
DRIVE-IN STORAGE

U-HAUL  
U-BOX

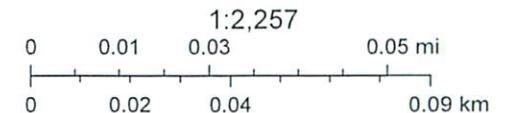
U-HAUL

# 2024-03-BZA 4816 S. 4th Street



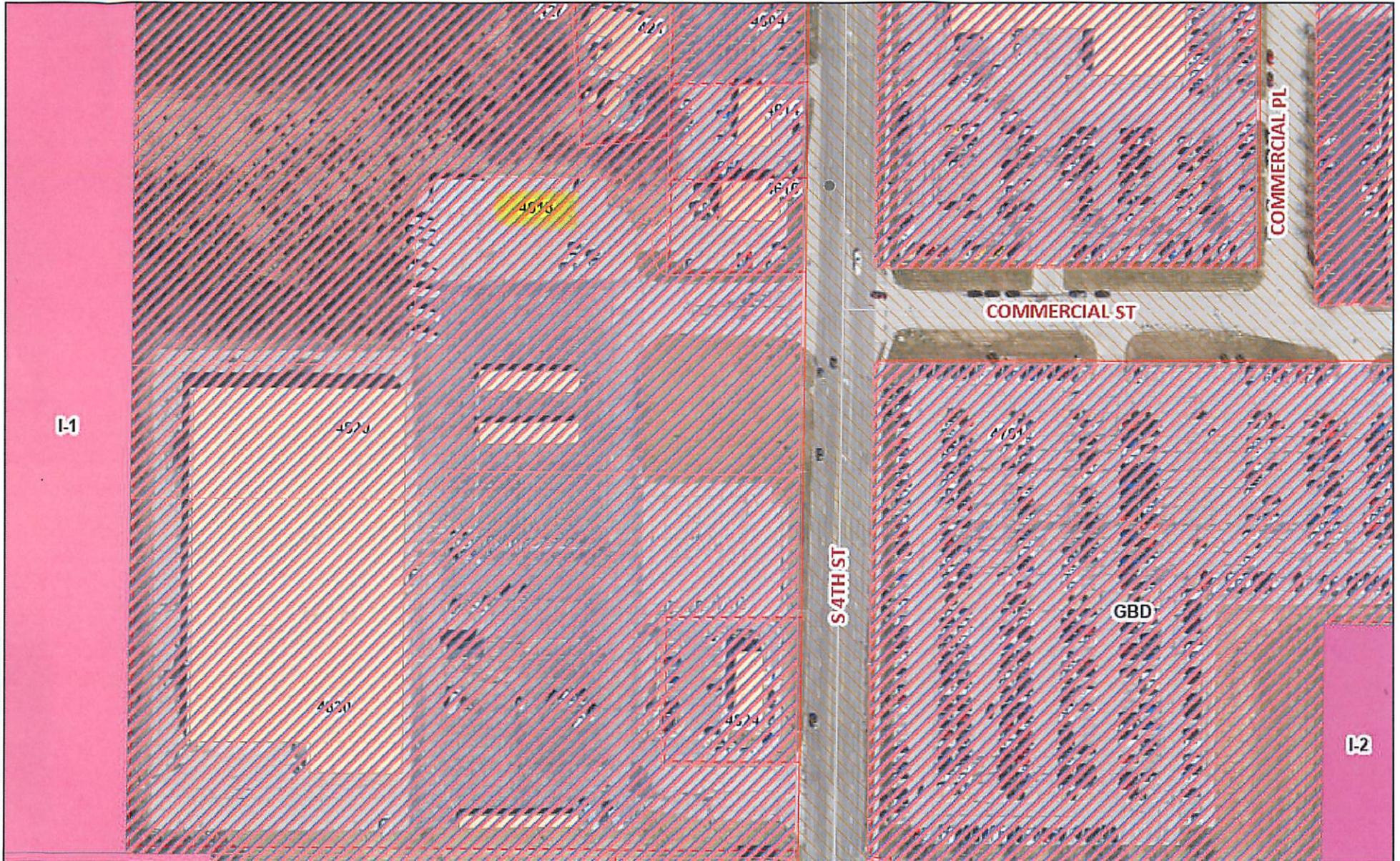
1/16/2024, 11:57:21 AM

-  Parcels\_Current
-  Buildings
-  Leavenworth City Limits
-  Address (Points)
-  City Right-of-Way
-  RoadCenterline



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

# 2024-03-BZA 4816 S. 4th Street - Zoning



1/16/2024, 11:58:21 AM

Zoning\_CURRENT



I-1

I-2



Buildings

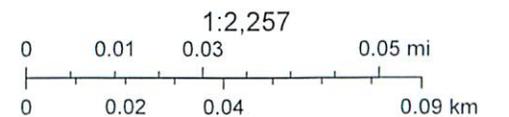


City Right-of-Way

Address (Points)

Leavenworth City Limits

RoadCenterline



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community



**BOARD OF ZONING APPEALS**  
CITY OF LEAVENWORTH, KANSAS

**OFFICE USE ONLY**

Case No.:	<u>2024-03</u>	BZA
Application No.	<u>14772</u>	
Fee (non-refundable)	<u>\$350.00</u>	
Filing Date	<u>12/8/23</u>	
Hearing Date	<u>1/22/24</u>	
Publication Date	<u>12/27/23</u>	

**PETITION**

Property Zoning: L-1

Location of Subject Property: ~~4618 S 4th St~~ 4820 S 4th St

Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)

Petitioner: Midwest Sign Company

Petitioner Address: 550 Stanley Rd, Kansas City, Kansas, 66115

Email: Abigail.gains@midwestsigncompany.com Telephone: 816-866-7446

Petitioner's Interest in Property: Install signage

Purpose of Petition: To install buildingsignage and window displays

- Appeal of Administration Decision \_\_\_\_\_ Date of Decision \_\_\_\_\_  
Section 11.03.A
- Variance:  
Section 11.03.B
- Exception:  
Section 11.03.C

Site Plan or drawing attached (hard & digital copy): Yes  No

I, the undersigned, certify that I am the legal owner of the property described above and that if this request is granted, I will proceed with the actual construction in accordance with the plans submitted within four (4) months from the date of filing or request in writing an extension of time for the Board's consideration

Property Owner Name (print): AREC , 34 LLC,

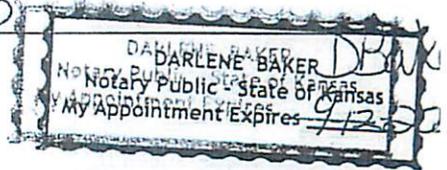
Signature: \_\_\_\_\_ Date: 12-7-23

State of Kansas  
County of Leavenworth

Signed or attested before me on December 7 by 2023

Notary Public: Darlene Baker

My appointment expires: 9-12-2027 (Seal)



**NOTE:** All signatures must be in black or blue ink. Signature of owner(s) must be secured and notarized.  
**Check list below...**

<input checked="" type="checkbox"/>	Supporting documentation: Site plan, plot plan, a drawing and any other pertinent data
<input checked="" type="checkbox"/>	Full legal description of subject property obtained from the Register of Deeds Office (913-684-0424)
<input checked="" type="checkbox"/>	Certified list of property owners within two hundred (200) feet of the subject property – County GIS Department 913-684-0448
<input checked="" type="checkbox"/>	A filing fee of Three Hundred- fifty dollars (\$350)

## Michelle Baragary

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**From:** Abigail Gaines <abigail.gaines@midwestsigncompany.com>  
**Sent:** Tuesday, December 12, 2023 12:29 PM  
**To:** Michelle Baragary  
**Subject:** Re: Variance  
**Attachments:** UHaul Approved Artwork (2).pdf

Michelle,

The south elevation has a total of 4 wall signs. The total wall surface being taken up by signage is 591.6 Sq Ft and covers 9% of the wall. The East elevation has a total of 5 wall signs, the total wall surface being taken up by signage is 860.2 Sq Ft and covers 18% of the wall. Also please disregard the art attached in the previous email, it has some sign dimensions wrong. Attached below is the correct artwork. Please let me know if you need anything else.

Thank you,

On Mon, Dec 11, 2023 at 1:49 PM Michelle Baragary <[mbaragary@firstcity.org](mailto:mbaragary@firstcity.org)> wrote:

Abigail,

What is the total wall surface of the signage on the east elevation and south elevation? Keep in mind, when calculating the sign surface it shall include the entire area within a single continuous perimeter enclosing all elements (individual letters and/or logo) of the sign which form an integral part of the display including the perimeter border.

Thanks,

*Michelle Baragary*

Planning Assistant

City of Leavenworth

100 N. 5<sup>th</sup> Street

Leavenworth, KS 66048

(913) 680-2626

[www.leavenworthks.org](http://www.leavenworthks.org)

**From:** Michelle Baragary  
**Sent:** Friday, December 8, 2023 12:05 PM

## Michelle Baragary

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**From:** Bethany Falvey  
**Sent:** Friday, December 8, 2023 10:03 AM  
**To:** Michelle Baragary  
**Subject:** FW: Variance  
**Attachments:** Variance Application (3).pdf; City aproval plan\_20231206\_0001.pdf; Legal description of 4820 S 4th st\_20231206\_0001.pdf; Report.pdf; Map.pdf; Uhaul Artwork.pdf

**From:** Abigail Gaines <[abigail.gaines@midwestsigncompany.com](mailto:abigail.gaines@midwestsigncompany.com)>  
**Sent:** Friday, December 8, 2023 10:01 AM  
**To:** Bethany Falvey <[Bethany.Falvey@firstcity.org](mailto:Bethany.Falvey@firstcity.org)>  
**Subject:** Re: Variance

Bethany,

*Addr. is 4618 S. 4th St.*

Attached in this email is a variance application and all required documents for U Haul self storage located at 4820 S 4th St. The reason for this variance is to allow a total of 6 window displays to be installed. Two window displays will be on the South elevation and Four window displays will be on the East elevation. This variance is also to request one extra wall sign on the South elevation. I have included the artwork as well for the window displays and the U-hual wall sign. If you have any questions or concerns, or need any additional information please let me know.

Thank you,

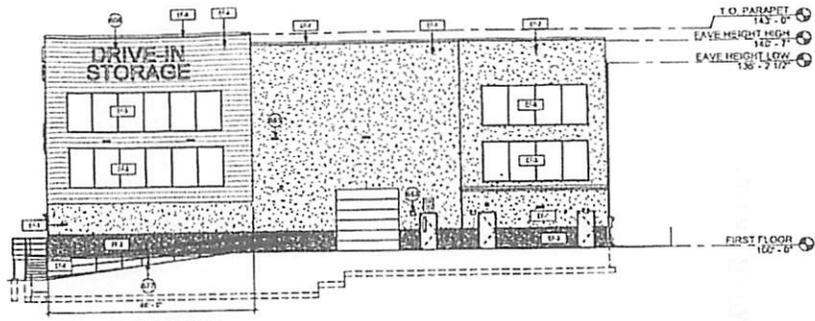
On Fri, Dec 8, 2023 at 8:46 AM Bethany Falvey <[Bethany.Falvey@firstcity.org](mailto:Bethany.Falvey@firstcity.org)> wrote:

You can email it and pay [online here](#).

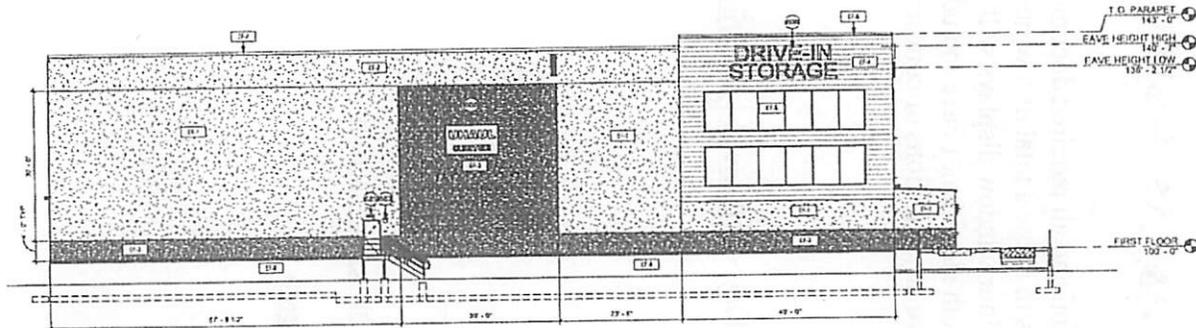
You can email me the application.

**From:** Abigail Gaines <[abigail.gaines@midwestsigncompany.com](mailto:abigail.gaines@midwestsigncompany.com)>  
**Sent:** Friday, December 8, 2023 8:35 AM  
**To:** Bethany Falvey <[Bethany.Falvey@firstcity.org](mailto:Bethany.Falvey@firstcity.org)>  
**Cc:** Kathy Rodgers <[KRodgers@firstcity.org](mailto:KRodgers@firstcity.org)>  
**Subject:** Re: Variance

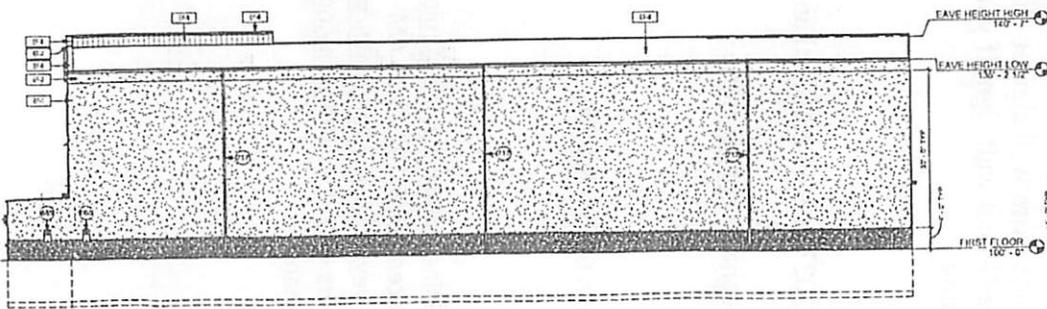
Bethany,



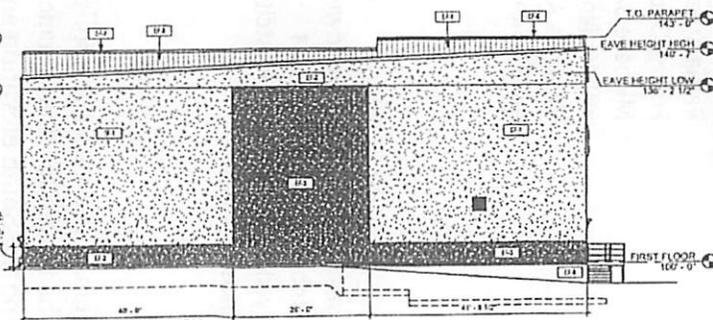
1 EAST ELEVATION  
3/32" = 1'-0"



2 SOUTH ELEVATION  
3/32" = 1'-0"



3 NORTH ELEVATION  
3/32" = 1'-0"



4 WEST ELEVATION  
3/32" = 1'-0"

EXTERIOR FINISH SCHEDULE						
MARK	MATERIAL TYPE	MANUFACTURER	MODEL / SIZE	COLOR	ADDITIONAL INFORMATION	COMMENTS
EF-1	GLASS FIBER GIP	KNOX	42"	BRANDY BROWN		
EF-2	GRANITE	VERMETT	42"	LEONARDI		
EF-3	PAVING	VERMETT	42"	LEONARDI		
EF-4	CONCRETE	ATLAS				OWNER PROVIDED
EF-5	ALUM. FRAMING	ATLAS				
EF-6	EXTERIOR PAINT	ATLAS				
EF-7	EXTERIOR PAINT	ATLAS				
EF-8	CONCRETE	ATLAS				
EF-9	CONCRETE	ATLAS				

KEYNOTE LEGEND	
117	NEW ADA STEEL FOR GUARDRAIL - REFER TO DETAIL
118	SCAFFOLD BY OWNER
119	SEE MECHANICAL DRAWINGS - REFER TO ELECTRICAL
120	ELECTRICAL EQUIPMENT - REFER TO ELECTRICAL
121	SEE MECHANICAL DRAWINGS - REFER TO MECHANICAL ELEVATIONS FOR FINISH

REVISIONS

PROFESSIONAL SEAL

**ISG**

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**HASTCO**

PROJECT: U-HAUL U-BOX

LEAVENWORTH, KANSAS

SITE ADDRESS: 4225 S 149th St, Leavenworth, KS 66048

SHEET CONTENTS: EXTERIOR ELEVATIONS

DRAWN: NWW  
CHECKED: LWF  
DATE: 2/23/22

NO. A2-11  
21-2571 A2 11

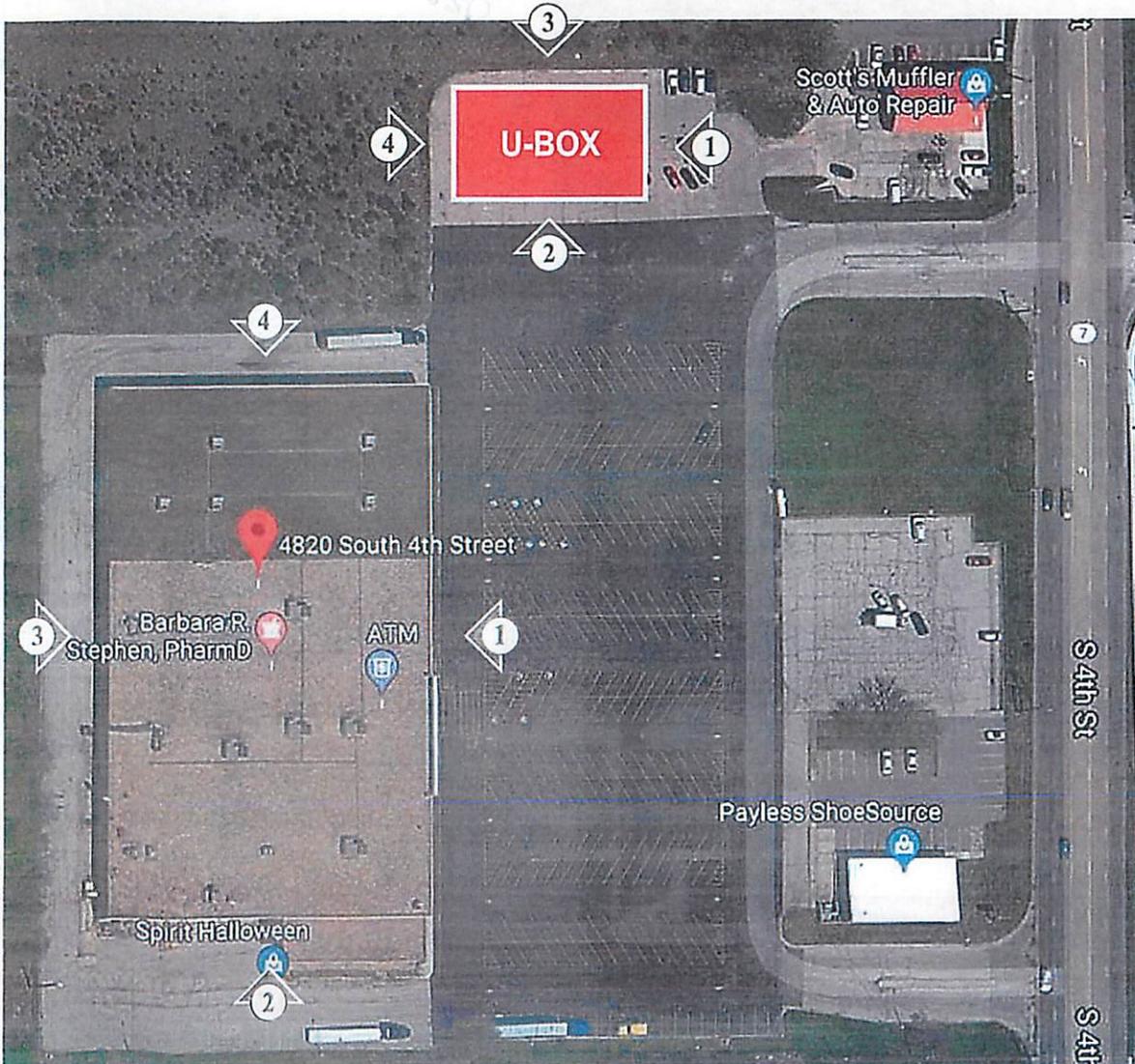
**IMPORTANT NOTICE TO U-HAUL MCP/MCO & VENDORS**

Designs & Art specifications are based on information provided by U-Haul MCP/MCO and/or Vendors contracted through MCP/MCO. Therefore, it is the responsibility of the U-Haul MCP/MCO and their Vendors to verify all information in these drawings to be accurate prior commencing Project Work. **FOR ANY DISCREPANCIES - NOTIFY UHI/ART DEPT. PRIOR TO COMMENCING PROJECT WORK.**

**Location:** UMC - Leavenworth  
**Street:** 4820 S 4th St  
**City:** Leavenworth  
**State / Province:** KS  
**Country / Mail Code:** USA / 66048

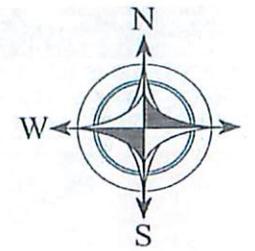
**Designed:** Adriano Carreon  
**Drawing:** Adriano Carreon  
**Approved:** Mike Shardy

**03/18/20**  
**03/18/20**  
**03/18/20**  
Drawings to scale. Do Not Use for fabrication, artwork provided. Questions Call: 1-800-528-03



- ① = East
- ② = South
- ③ = West
- ④ = North

- U-BOX**
- ① = East
  - ② = South
  - ③ = West
  - ④ = North



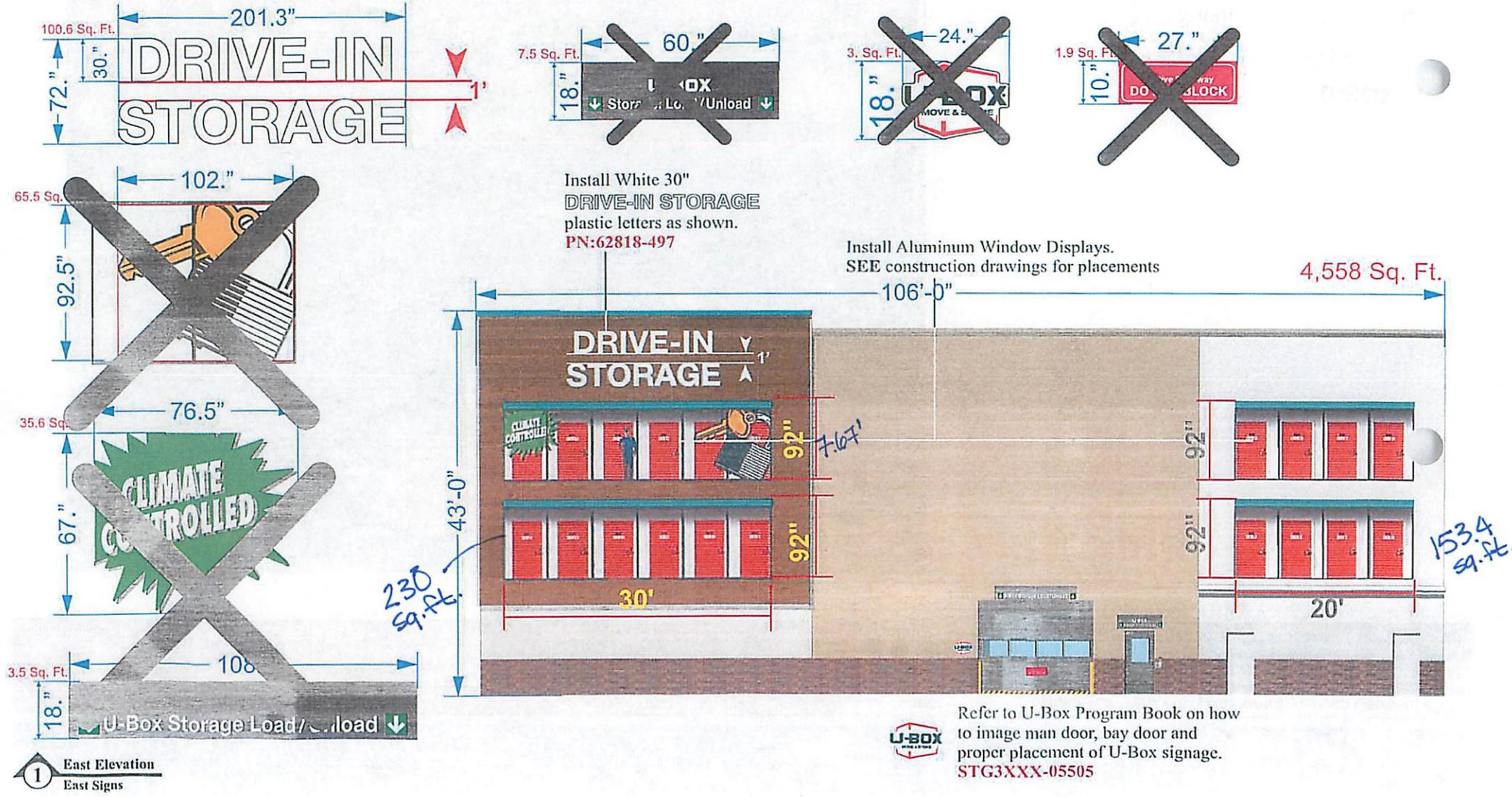
**IMPORTANT NOTICE TO U-HAUL MCP/MCO & VENDORS**

Designs & Art specifications are based on information provided by U-Haul MCP/MCO and/or Vendors contracted through MCP/MCO. Therefore, it is the responsibility of the U-Haul MCP/MCO and their Vendors to verify all information in these drawings to be accurate prior to commencing Project Work. **FOR ANY DISCREPANCIES - NOTIFY UHI ART DEPT. PRIOR TO COMMENCING PROJECT WORK.**

<b>Location:</b>	UMC - Leavenworth	<b>Designed:</b>	Adriano Carreon	02/08/23
<b>Street:</b>	4820 S 4th St.,	<b>Drawing:</b>	Adriano Carreon	02/08/23
<b>City:</b>	Leavenworth,	<b>Approved:</b>	Michael Shardy	02/08/23
<b>State / Province:</b>	KS	Drawings to scale. Do Not Use for fabrication, artwork provided. Questions Call: 1-800-528-0300		
<b>Country / Mail Code:</b>	66048			

**NOTE:** SEE Construction Documents for add'l details.

**NOTE:** You can order Signage from **WEBBEST**. Use part numbers listed below when ordering.



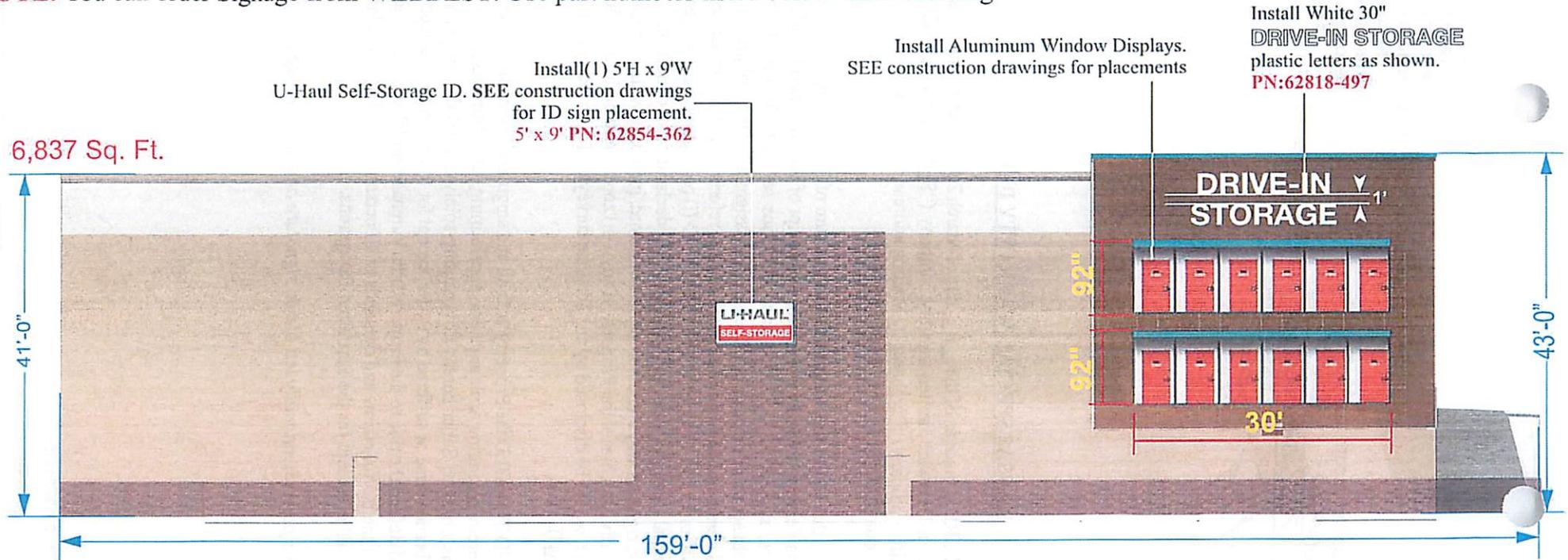
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Doc #: 2019R01475  
STACY R. DRISCOLL  
REGISTER OF DEEDS  
LEAVENWORTH COUNTY, KANSAS  
RECORDED ON:  
03/06/2019 01:46:12 PM  
RECORDING FEE: 72.00  
PAGES: 4

Entered in the transfer record in my office this  
6 day of Mar, 20 19  
Janet K. Driscoll  
County Clerk  
by B. Jones

**KANSAS SPECIAL WARRANTY DEED**

THIS INDENTURE is made as of the 6 day of March 2019 by and between SERITAGE KMT FINANCE LLC, a Delaware limited liability company ("Seller"), and AREC 34, LLC, a Delaware limited liability company ("Purchaser"). Mailing address of Purchaser is 2727 N. Central Avenue, Phoenix, Arizona 85004.

WITNESSETH, that Seller, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Seller duly paid, the receipt of which is hereby acknowledged, does by these presents, subject to the terms and conditions set forth herein, CONVEY and WARRANT unto Purchaser and Purchaser's successors and assigns all of the real property described on Exhibit A attached hereto and incorporated herein by this reference in the City of Leavenworth, Leavenworth County, Kansas (the "Property"), SUBJECT TO (i) real estate taxes and assessments, both general and special, not yet due and payable; (ii) declarations, conditions, covenants, restrictions, easements, rights of way and other matters of record, including without limitation, those items shown on the subdivision plat of the Property, if any; (iii) zoning and building ordinances; and (iv) those matters which would be disclosed by any accurate survey of the Property (collectively, the "Permitted Exceptions").

TO HAVE AND TO HOLD the Property with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, unto Purchaser and Purchaser's successors and assigns, forever; Seller hereby covenanting solely that (i) the Property is free and clear from any encumbrance done or suffered by Seller, except for the Permitted Exceptions, and (ii) Seller will warrant and defend the title to the Property unto Purchaser and Purchaser's successors and assigns forever against the lawful claims and demands of all persons claiming or to claim the same by, through or under Seller, except for the Permitted Exceptions.

*[remainder of this page intentionally left blank; signature and acknowledgment follow]*

IN WITNESS WHEREOF, Seller has caused this Deed to be executed the day and year first above written.

Seritage KMT Finance LLC,  
a Delaware limited liability company

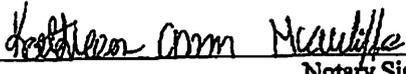
BY:   
NAME: Matthew Fernand  
TITLE: Vice President

STATE OF NEW YORK     )  
  )ss  
COUNTY OF NEW YORK    )

On this 5 day of March 2019, before me, a Notary Public in and for said County and State, personally appeared Matthew Fernand, to me know to be the person(s) described in and who executed the foregoing instrument as Vice President of SERITAGE KMT FINANCE LLC, a Delaware limited liability company, and such person(s) acknowledged the execution of the same to be the act and deed of the entity referenced above.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

KATHLEEN ANN MCAULIFFE  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01MC6363803  
Qualified in New York County  
My Commission Expires 08-28-2021

  
Notary Signature  
Kathleen Ann McAuliffe  
Printed Name of Notary

My Commission Expires:

08/28/2021

(Signature Page to Special Warranty Deed – Leavenworth)

Exhibit A

Tract 1:

A TRACT OF LAND LOCATED IN THE NE 1/4 OF SECTION 13, TOWNSHIP 9 SOUTH, RANGE 22 EAST OF THE 6TH P.M., IN THE CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
COMMENCING AT THE NE CORNER OF SAID SECTION 13, THENCE S 0° 00' 00" WEST ALONG THE EAST LINE OF SAID SECTION 13 A DISTANCE OF 660.00 FEET; THENCE S 90° 00' 00" W A DISTANCE OF 40.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 73 TO THE POINT OF BEGINNING; THENCE S 0° 00' 00" W ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 214.23 FEET; THENCE S 90° 00' 00" W A DISTANCE OF 370.00 FEET; THENCE S 0° 00' 00" W A DISTANCE OF 40.00 FEET; THENCE S 90° 00' 00" W A DISTANCE OF 330.00 FEET; THENCE N 0° 02' 39" W A DISTANCE OF 539.68 FEET; THENCE N 88° 48' 38" E 245.57 FEET; THENCE N 88° 47' 22" E A DISTANCE OF 208.54 FEET; THENCE S 05° 56' 20" E A DISTANCE OF 168.91 FEET; THENCE N 80° 02' 01" E A DISTANCE OF 93.81 FEET; THENCE S 0° 26' 30" W A DISTANCE OF 45.91 FEET; THENCE S 00° 01' 56" W A DISTANCE OF 99.97 FEET; THENCE N 88° 52' 18" E A DISTANCE OF 136.98 FEET TO THE POINT OF BEGINNING, EXCEPT ANY PART USED OR DEDICATED FOR STREETS, ROADS AND PUBLIC RIGHTS OF WAY.

**Tract 2:**

**A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 9 S, RANGE 22 E OF THE 6TH P.M., CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 13, THENCE S 0°00'00" W ALONG THE EAST LINE OF SAID SECTION 13 A DISTANCE OF 874.23 FEET; THENCE S 90° 00' 00" W A DISTANCE OF 40.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 73 AND THE POINT OF BEGINNING. THENCE S 0° 00' 00" W ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 157.00 FEET; THENCE S 90° 00' 00" W A DISTANCE OF 140.00 FEET; THENCE S 0° 00' 00" W A DISTANCE OF 150.00 FEET; THENCE N 90° 00' 00" E A DISTANCE OF 140.00 FEET; THENCE S 0° 00' 00" W A DISTANCE OF 94.00 FEET; THENCE S 88° 47' 26" W A DISTANCE OF 780.16 FEET; THENCE N 0° 00' 00" E A DISTANCE OF 375.78 FEET; THENCE N 90° 00' 00" E A DISTANCE OF 330.00 FEET; THENCE N 0° 00' 00" E A DISTANCE OF 40.00 FEET; THENCE N 90° 00' 00" E A DISTANCE OF 370.00 FEET TO THE POINT OF BEGINNING, EXCEPT ANY PART USED OR DEDICATED FOR STREETS, ROADS OR HIGHWAYS.**